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Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

DRAFTED BY OES/NET/NEP:R.DEMING:BJE
APPROVED BY S/AS:AMB.G.SMITH
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EUR/RPE:W.SALISBURY
L/N:R.BETTAUER
ACDA:R.WILLIAMSON
----------113863 291425Z /65
O R 291358Z APR 78
FM SECSTATE WASHDC
TO AMEMBASSY BRUSSELS IMMEDIATE
AMEMBASSY PARIS
INFO AMEMBASSY LONDON
AMEMBASSY ROME
AMEMBASSY DUBLIN
AMEMBASSY LUXEMBOURG
AMEMBASSY BONN
AMEMBASSY THE HAGUE
AMEMBASSY COPENHAGEN

C O N F I D E N T I A L STATE 110013

EXDIS USEEC ALSO FOR EMBASSY

E.O. 11652: GDS

TAGS: ENRG, MNUC, TECH

SUBJECT: US-EURATOM NEGOTIATIONS

REF: A) BRUSSELS 7937 B) BRUSSELS 7964

1. SUMMARY. IN THE ABSENCE OF COMMUNITY AGREEMENT TO
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NEGOTIATE, IT WOULD BE THEORETICALLY POSSIBLE UNDER THE NON-PROLIFERATION ACT OF 1978 FOR THE PRESIDENT TO AUTHORIZE BY EXECUTIVE ORDER, SUBJECT TO CONGRESSIONAL VETO, EXPORTS TO EURATOM ON A CASE BY CASE BASIS, BUT WE BELIEVE THIS COURSE OF ACTION IS NEITHER ADMINISTRATIVELY WORKABLE NOR POLITICALLY FEASIBLE. END SUMMARY.

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2. FOLLOWING IS THE THEORETICAL SCENERIO FOR APPROVAL OF EXPORTS TO EURATOM IN THE ABSENCE OF AGREEMENT TO NEGOTIATE:

A) THE SECRETARY OF STATE WOULD SUBMIT THE EURATOM LICENSE APPLICATION TO THE NRC WITHIN SIXTY DAYS OF ITS RECEIPT. IN THE SUBMISSION HE WOULD HAVE TO ADDRESS THE FACT THAT THE IMMEDIATE EXPORT CRITERIA ARE NOT MET, BUT HE COULD REPEAT COULD ARGUE THAT FAILURE TO ISSUE THE LICENSE WOULD BE SERIOUSLY PREJUDICIAL TO THE NON-PROLIFERATION OBJECTIVES OF THE UNITED STATES.

B) REGARDLESS OF THE POLICY ARGUMENTS ADVANCED BY THE SECRETARY OF STATE, THE NRC WOULD HAVE TO FIND THAT THE APPLICATION DID NOT MEET THE IMMEDIATE EXPORT CRITERIA AND THEREFORE NOT ISSUE THE LICENSE. THE LICENSE APPLICATION WOULD THEN GO TO THE PRESIDENT.

C) THE PRESIDENT COULD REPEAT COULD THEN ISSUE AN EXECUTIVE ORDER AUTHORIZING THE EXPORT IF HE DETERMINED THAT WITHHOLDING THE PROPOSED EXPORT WOULD BE SERIOUSLY PREJUDICIAL TO THE ACHIEVEMENT OF US NON-PROLIFERATION OBJECTIVES, OR WOULD OTHERWISE JEOPARDIZE THE COMMON DEFENSE AND SECURITY.

D) THE EXECUTIVE ORDER, ALONG WITH THE PRESIDENT'S EXPLAN-
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ATION OF WHY THE EXPORT SHOULD BE MADE, WOULD BE THEN SUBMITTED TO THE CONGRESS AND WOULD LIE BEFORE CONGRESS FOR A PERIOD OF SIXTY DAYS OF CONTINUOUS SESSION AND THE EXPORT COULD NOT BE MADE IF DURING THAT SIXTY DAYS CONGRESS ADOPTED A CONCURRENT RESOLUTION STATING THAT IT DID NOT FAVOR THE EXPORT.

3. THIS SCENARIO WOULD HAVE TO BE REPEATED IN ITS ENTIRETY FOR EACH LICENSE APPLICATION, SO FROM A PURELY ADMINISTRATIVE POINT OF VIEW IT IS UNWORKABLE. PROCEDURE WAS DESIGNED BY CONGRESS TO ADDRESS ONLY A MINIMUM OF EXCEPTIONAL CASES, NOT THE TYPE OF WORKLOAD PROVIDED BY EURATOM VOLUME OF APPLICATIONS.

4. FROM A POLICY POINT OF VIEW, THIS SCENARIO IS EQUALLY UNPROMISING. EURATOM IS ALREADY TREATED AS SPECIAL CASE BY THE LEGISLATION, BEING EXEMPT FROM CERTAIN PROVISIONS OF THE IMMEDIATE EXPORT CRITERIA IF IT AGREES TO BEGIN THE NEGOTIATION PROCESS. THE ADMINISTRATION HAS MADE CLEAR TO THE COMMUNITY THAT AGREEMENT TO ENTER NEGOTIATIONS WOULD IN NO WAY COMPROMISE THE SUBSTANTIVE POSITIONS OF THE EC, AND THAT DURING THE COURSE OF INFCE WE DO NOT EXPECT TO

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RESOLVE THE "SENSITIVE ISSUES". IF, DESPITE EURATOM'S UNWILLINGNESS TO MEET THIS ESSENTIALLY TECHNICAL REQUIREMENT OF THE LAW, THE ADMINISTRATION WERE TO MOVE TO LICENSE EXPORTS IN ANY CASE, THE CREDIBILITY OF US NON-PROLIFERATION POLICY WOULD BE UNDERMINED AT HOME AND ABROAD. MOREOVER, EVEN IF THE SECRETARY OF STATE AND PRESIDENT FOUND A BASIS ON WHICH TO ARGUE THAT WITHHOLDING THE LICENSE "WOULD PREJUDICE US NON-PROLIFERATION OBJECTIVES OR JEOPARDIZE THE COMMON DEFENSE AND SECURITY', IT IS UNLIKELY IN OUR JUDGMENT THAT CONGRESS WOULD SHARE THIS PERSPECTIVE SINCE IT NEVER INTENDED THE PRESIDENTIAL OVERRIDE PROVISION TO BE USED IN THIS MANNER.

5. YOU MAY DRAW ON THE ABOVE WITH BRUNNER AS YOU DEEM
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APPROPRIATE AND EMBASSY PARIS MAY AT ITS DISCRETION MAKE SAME POINTS TO JACOMET. YOU MAY EMPHASIZE THAT, WHATEVER THEORETICAL SCENARIOS MIGHT APPEAR TO BE AVAILABLE, WE SEE NO PRACTICAL WAY TO AVOID THE CLEAR CONGRESSIONAL INTENT BEHIND THE LEGISLATIVE PROVISIONS REGARDING EURATOM. VANCE

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NUCLEAR AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 apr 1978
Decaption Date: 20 Mar 2014
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE110013
Document Source: CORE
Document Unique ID: 00
Drafter: R.DEMING:BJE
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780184-0038
Format: TEL
From: STATE
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t1978041/aaaaaamk.tel
Line Count: 141
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 8a38b2a5-c288-dd11-92da-001cc4696bcc
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: 78 BRUSSELS 7937, 78 BRUSSELS 7964
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2812696
Secure: OPEN
Status: NATIVE
Subject: US-EURATOM NEGOTIATIONS
TAGS: ENRG, MNUC, TECH, EURATOM
To: BRUSSELS PARIS
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/8a38b2a5-c288-dd11-92da-001cc4696bcc
Review Markings:
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